



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN**

**GERALD C. MANN
ATTORNEY GENERAL**

Honorable George H. Sheppard
Comptroller of Public Accounts
Austin, Texas

Dear Sir:

Opinion No. 0-5224
Re: Witness Fees

Your request for opinion has been received and carefully considered by this department. We quote from your request as follows:

"House Bill No. 214, Acts of the Regular Session of the Forty-Seventh Legislature, amends Article 1036, C.C.P. so that Section 1 thereof reads as follows:

"Any witness who may have been subpoenaed, or shall have been recognized or attached and given bond for his appearance before any court, or before any grand jury, out of the county of his residence, to testify in a felony case, regardless of disposition of said case, and who appears in compliance with the obligations of such recognizance or bond, shall be allowed three (3) cents per mile going to and returning from the court or grand jury, by the nearest practical conveyance, and two (\$2.00) dollars per day for each day he may necessarily be absent from home as a witness in such case;"

"The question has arisen in this department as to whether a witness traveling to such court or grand jury on a railway pass or in a state automobile would be entitled to the three cents per mile as indicated in the above quoted section of Article 1036, C.C.P.

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"In some instances witnesses are carried to court by peace officers or state patrolmen in state owned automobiles. Would such witness be entitled to his three cents a mile?"

Prior to its amendment, Section 1 of Article 1036, V.A.C.C.P., provided that such witness:

"... shall be allowed his actual traveling expenses, not exceeding 4 cents per mile going to and returning from the court or grand jury, by the nearest practical conveyance, and two dollars per day for each day he may necessarily be absent from home as a witness in such case."

You are respectfully advised that it is the opinion of this department that such witnesses would be entitled to three cents per mile going to and returning from the court or grand jury by the nearest practical conveyance. Whether they travelled on a railway pass, with peace officers, in state owned automobiles, or in their own automobiles would be immaterial.

However, we wish to point out that State employees cannot claim traveling expenses from the State and also from the court in State cases. See Subdivision 12(a) of Section 2 of the Departmental Appropriation Bill, 47th Legislature of Texas, which reads as follows:

"a. No traveling expenses shall be claimed, allowed, or paid unless incurred while traveling on State business. Any State official or employee entitled to traveling expenses out of State appropriations herein made, who is legally or officially required to be present at the trial of any State case, shall not claim traveling expenses from the State and also from the Court wherein said case is pending. If by oversight, duplicate claims are filed for said traveling expenses and collected, then said officers or employees shall reimburse and refund to the State Treasurer an amount equal to the

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respective amount collected under such
witness fees and mileage claim."

Very truly yours

APPROVED JUL 17, 1941

ATTORNEY GENERAL OF TEXAS

George H. Sheppard
FIRST ASSISTANT
ATTORNEY GENERAL

By

Wm. J. Fanning
Wm. J. Fanning
Assistant

WJF:saw

